Supreme Court, U. S.
FILED
APR 7 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1234

INTERNATIONAL ASSOCIATION OF MACHINISTS
& AEROSPACE WORKERS, AFL-CIO,

Petitioner,

—against—

COMPAGNIE NATIONALE AIR FRANCE,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Questions Presented

1. Is there a conflict in other Courts of Appeals with the decision below that there was no jurisdiction over plaintiff's complaint because "the gravamen of the complaint concerns IAM's continued *representation* of Air France's cargo agents", a

question within the exclusive jurisdiction of the National Mediation Board?[1]

2. Does the contention that Section 2 or Section 6 of the Railway Labor Act prevents the application of an agreement for limited voluntary recognition of an employee representative, in accordance with its terms, to terminate that recognition present an important question for decision under that Act?

3. Does petitioner, which is neither certified nor recognized as the representative of Air France cargo agents, have standing to assert claims that Air France interfered with the rights of its cargo agent employees?

Statement Of The Case

Petitioner International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") brought this action on June 15, 1977 against Compagnie Nationale Air France ("Air France") seeking, among other things, to enjoin Air France from negotiating for its cargo agents with anyone other than IAM on the premise that a labor agreement which had terminated in accordance with its terms was still effective. It now seeks review of the judgment of the United States Court of Appeals for the Second Circuit which affirmed from the bench the dismissal of the IAM's complaint, and denial of its motion for a preliminary injunction, by the United States District Court for the Southern District of New York. 433 F.Supp 1087.

The following undisputed facts were established by affidavits filed in the district court:

The IAM has never been certified by the National Mediation Board ("NMB") as the representative of the cargo agents employed by Air France, and could not be so certified since the cargo agents do not constitute a "craft or class" of employees entitled to choose a representative under the Railway Labor

[1] District Court opinion, App. C., p. 26a; emphasis in original. References to App. A-D are to the appendices to the petition herein.

Act ("RLA"), 45 U.S.C. §§151-188.[2] On January 3, 1977, the IAM and Air France entered into an agreement ("the Agreement") which again extended recognition to the IAM as the representative of the cargo agents. The Agreement, however, limited that recognition by Article XVII(q), which provided for termination of the Agreement and of recognition in the event of a decision of the NMB on any airline which affected the craft or class in which the cargo agents had historically been included for representation purposes. Article XVII(q) provided:

> "Notwithstanding the 'Effective Date and Duration' provisions of this Agreement, and any reference to the Railway Labor Act in the Agreement, if a decision of the National Mediation Board permits the certification of a representative of employees of any airline who performs [sic] functions analogous to those being performed by the employees covered by this Agreement in a group other than the class or craft of which the National Mediation Board has historically determined such employees to be a part, then this Agreement will terminate." (App. C, pp. 10a-11a).

On May 4, 1977, Air France notified the IAM that because of a decision on March 23, 1977 by the NMB, the Agreement, pursuant to Article XVII(q), had been terminated and that Air France therefore would no longer recognize the IAM as the representative of the cargo agents. Following termination of the Agreement and of recognition, the IAM did not pursue any of the administrative remedies available to it under the provi-

[2] In its Case No. R-4492 (March 3, 1976), *In the Matter of Representation of Employees of Air France (Cargo Agents)*, the NMB dismissed the application of an organization to represent the cargo agents on the ground that they did not constitute a craft or class. Under the RLA, a union can obtain certification as the representative of employees of an air carrier only if the NMB determines that those employees constitute a craft or class. RLA Sections 2 Fourth and 2, Ninth; 45 U.S.C. §§152, Fourth, 152, Ninth. The statute, however, does not prohibit a carrier from entering into labor agreements covering employees who, as a group, do not constitute a craft or class; carriers, including Air France, have on occasion recognized representatives of such employee groups.

sions of the RLA incorporated in the contract. Since the IAM never submitted any question of the interpretation or application of Article XVII(q) to the System Board of Adjustment, it must be accepted for purposes of this case—as the courts below did—that Air France correctly applied the clause in accordance with its telegram of May 4, 1977, and that the IAM's status as representative of the cargo agents was terminated.

After sending the telegram, Air France officials met with the cargo agents at each of its stations to explain the situation and to make arrangements for the future now that the IAM representation had terminated. Air France suggested that the employees select a small number of their colleagues with whom Air France could meet to discuss continuation of their employment under essentially the existing working conditions, as well as to discuss any problems or suggested changes in working conditions. No reduction in existing benefits was made.

Some six weeks following notification of termination of the Agreement, IAM commenced this action, seeking to compel Air France to reinstate its recognition of the IAM and the terminated Agreement. The IAM complaint alleged that Air France, "No longer recognized the IAMAW as the representative of the cargo employees" (¶9), and that Air France is attempting to "eliminate the IAMAW as the representative of the cargo agents." (¶11).

On July 1, 1977, the district court denied the IAM's motion for a preliminary injunction and dismissed the complaint for lack of jurisdiction, holding that (1) the district court had no "authority to interpret the terms of the collective bargaining agreement and determine whether Air France's actions are in lawful compliance with the agreement," as that was a minor dispute within the exclusive jursidiction of the System Board of Adjustment (App. C, p. 19a); (2) the court was without jurisdiction to issue an injunction to preserve the status quo in aid of the System Board's jurisdiction, as the dispute had not been submitted to the System Board (App. C, pp. 20a-21a); and (3)

"the gravamen of the complaint concerns IAM's continued *representation* of Air France's cargo agents," a dispute "within the primary jurisdiction of the NMB" (App. C, p. 26a; emphasis in original).

On December 6, 1977, the Court of Appeals for the Second Circuit affirmed the judgment of the district court "essentially for the reasons stated by [the district judge]." (App. A, p. 4a).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I

There is no Conflict Between the Decision Below and Those of Other Courts of Appeals

Petitioner asserts that review of the decision below is necessary to resolve an alleged conflict with the decision of the Court of Appeals for the Seventh Circuit in *Burlington Northern, Inc. v. American Railway Supervisors Association,* 503 F.2d 58 (7th Cir. 1974), *cert. denied,* 421 U.S. 975 (1975). There is no such conflict.

The *Burlington Northern* decision was correctly distinguished by the Court below, in its statement from the bench, as involving enforcement of a labor contract, made by a predecessor carrier with a certified union, which had been imposed by the ICC as a precondition of a merger agreement (App. A, pp. 2a-3a). Jurisdiction in that case was thus squarely predicated on both the merger agreement itself and the ICC approval of the agreement, pursuant to the Interstate Commerce Act. *Burlington Northern* was a true contract enforcement case, since obviously, in relying on the Merger Agreement, the carrier would not be allowed to disavow its acceptance of the labor contracts which was a precondition of the

validity of the Merger Agreement.[3] Here, there is no underlying merger, or other, agreement for the court to enforce; it therefore had no jurisdiction to determine whether the IAM remained the representative of the cargo agents despite the express limitation, and termination, of that status by the very "voluntary agreement" which accorded it.

Petitioner here contends that Air France's termination of, and failure to adhere to, a contract with the IAM, and its failure to treat the IAM as the exclusive representative of the cargo agents constitute violations of the Railway Labor Act. The underlying assumption of such charges is that Air France had a statutory (*i.e.* RLA) obligation to maintain the contract and to continue to recognize the representative status of the IAM. What petitioner would have the Court ignore is that its representative status came from the contract, not the statute; the contract provided for termination of that status and the contract itself; and there can be no violation of statutory obligations arising from contract and representative status in the absence of both.

Petitioner agrees that the "crux of the decision" below was the district court's finding that "the issue here is really one of representation, a subject which Congress has given the Mediation Board the duty to determine," (Pet., p. 8), but asserts that the court had jurisdiction over its complaint in the absence of any present challenge to its status before the NMB. The decision below, however, far from creating a conflict in the

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[3] Moreover, as the quotation from that case (Pet., p. 9) shows, the union there had been certified. Petitioner misstates the holding of *Burlington Northern*, even as it applied to the facts of that case, in its assertion that "Under the Burlington Northern decision the NMB would not have jurisdiction and the relief sought for violations of the RLA would properly be before the Federal Courts. . ." (Pet., p. 10), since (1) the *Burlington Northern* court indicated that even the union recognition required by the Merger Agreement would have to give way to a determination by the NMB (503 F.2d, at 63); there is no suggestion in that case that the NMB's exclusive jurisdiction over *representation questions* was at all diminished by its holding; and (2) the *Burlington Northern* decision had nothing to do with relief for "violations of the RLA", such as that allegedly sought by petitioner here.

circuits, continues the extensive line of judicial authority which holds that where there is doubt as to whether a union is or remains the legitimate representative of a carrier's employees, the courts do not have jurisdiction to determine the question of representation. *International Association of Machinists v. Northeast Airlines, Inc.*, 536 F.2d 975 (1st Cir.), *cert. denied*, 429 U.S. 961 (1976); *Flight Engineers' International Association v. Eastern Air Lines, Inc.*, 311 F.2d 745 (2d Cir.), *cert. denied*, 373 U.S. 924 (1963); *Ruby v. American Airlines, Inc.*, 323 F.2d 248 (2d Cir. 1963), *cert. denied*, 376 U.S. 913 (1964); *Brotherhood of Railway and Steamship Clerks v. United Air Lines, Inc.*, 325 F.2d 576 (6th Cir. 1963), *cert. dismissed*, 379 U.S. 26 (1964). There is no authority to support petitioner's contention that courts are divested of jurisdiction in representation matters only by the actual institution of a representation proceeding before the NMB which can be done only by action of the employees, not of the carrier. See, to the contrary, *International Association of Machinists v. Northeast Airlines, Inc., supra.* Except to enforce the NMB's statutory obligations, see *International In-Flight Catering Co. v. National Mediation Board*, 555 F.2d 712 (9th Cir. 1977), the courts have no jurisdiction over representation matters, whether a question is pending before the NMB or not, because Congress has given exclusive authority to the NMB to decide all questions concerning employee representation.

In sum, what petitioner here wanted the courts below to do is first to declare that it is the employee representative and then to determine that Air France had violated a mandatory duty to deal with it. No statutory requirement, however, compels Air France to recognize and bargain with the IAM for a group of employees who, under the statute, have no right to select a representative. It was only by contract that the IAM attained representative status, a contract which put an express limitation on that status, and which has terminated pursuant to that limitation. If the employees involved desire representation by the IAM, or by any other union in a craft or class, they, or their organization, are free to seek the services of the NMB under

Section 2, Ninth to investigate any alleged representation dispute within an established craft or class, or in any group which the NMB may determine is a craft or class.

II
The Case Does Not Involve An Important Question Under the Railway Labor Act, and was Properly Decided on its Unique Facts

A. *RLA Sections 2 and 6 do not Apply to a Terminated Limited Agreement to Recognize an Employee Representative.*

Petitioner asserts that "[t]he issue of whether a voluntary agreement which recognizes collective bargaining representative [sic] of less than a class or craft unit is within the coverage of RLA" is one of "substantial consequence" (Pet., p. 10). Be that as it may, that is not an issue in this case. This case involves a unique agreement providing for recognition of an employee representative and voluntarily making provisions of the RLA applicable for a limited time, which terminated in accordance with terms of the agreement. The broad issue raised by petitioner was neither decided by the courts below, nor necessary to any resolution of this case. Since the district court had no jurisdiction to determine itself the merits of any minor dispute over the application or interpretation of Article XVII(q),[4] for the purposes of review, it cannot be questioned that Air France did act in accordance with the contract. It follows that the contract which extended representative status to the IAM must be treated as terminated.

Air France's argument below was only that Sections 2 and 6 of the RLA do not apply to the limited agreement to recognize an employee representative involved here. Section 2,

[4] Under the RLA, so-called minor disputes over the interpretation or application of agreements must be resolved by a System Board of Adjustment, not by the courts. *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 723 (1945); *International Association of Machinists v. Northeast Airlines*, 473 F.2d 549, 555 (1st Cir.), *cert. denied*, 409 U.S. 845 (1972).

First imposes a duty on carriers and representatives of employees to "make and maintain agreements with respect to rates of pay, rules and working conditions." It imposes no obligation on a carrier to make such an agreement with anyone claiming to represent a group of employees comprising less than a craft or class and, moreover, imposes no obligation whatsoever to make and maintain agreements concerning *representative status.*

Similarly, Section 2, Second does not require conferences to resolve disputes, in the absence of a representative of employees in a craft or class, one of the statutory parties to such conference. Nor do Section 2, Seventh and Section 6 require maintenance of the status quo and notice of intended change of agreements with anyone other than craft or class representatives,[5] and then only as to agreements affecting rates of pay, rules and working conditions. They do not speak to maintenance of agreements to recognize bargaining agents for crafts or classes, much less bargaining agents for groups which do not comprise crafts or classes.

Air France does not rely on *International Brotherhood of Teamsters v. Brotherhood of Railway, Airline and Steamship Clerks,* 402 F.2d 196 (D.C. Cir.), *cert. denied,* 393 U.S. 848 (1968), for the broad proposition, stated by petitioner, that "any unit less than a craft or class, regardless of whether there is a voluntary recognition agreement, is not covered by the RLA" (Pet., p. 11). The significance of that decision to this case is the principle stated therein that when a certified representative of a craft or class is displaced as the result of an election in which no successor is designated, subsequent relationships between carrier and employees are not governed by the RLA. (402 F.2d, at 202). Similarly here, when a contractually recognized representative of a group of employees who are *not* a craft or class is displaced pursuant to the contract, the provisions of the RLA do not apply to create any duties to the former representative. On the contrary, carrier and employ-

[5] Of course, to the extent that provisions of the RLA are incorporated into a voluntary contract, the parties may have assimilated duties so long as the contract exists.

ees are relegated to the relationship which existed prior to voluntary contractual recognition. This case does not involve any of the "critical issues" posed by the petitioner (Pet., pp. 10-11), since the pre-supposition of such issues is that a voluntary recognition agreement has not terminated—as it did here—in accordance with the agreement's own limitation.

B. *Claims of Alleged Interference with Cargo Agents' Alleged Choice of Representative were Properly Dismissed.*

The complaint was properly dismissed insofar as it alleged violations of RLA Sections 2, Third and 2, Fourth by Air France's alleged interference with the cargo agents' choice of representative.

(1) The "interference" alleged by petitioner consists of Air France's termination of limited voluntary recognition of the IAM in accordance with the agreement's express limitation. The courts below had no jurisdiction to consider claims of carrier interference where the basic issue, as here, is a question of representation, *Ruby v. American Airlines, Inc.*, 323 F.2d 248, 254 (2d Cir. 1963), *cert. denied*, 376 U.S. 913 (1964); nor where "the underlying conduct upon which the claim is based is subject to resolution by the System Board of Adjustment," *International Association of Machinists v. Eastern Airlines, Inc.*, 320 F.2d 451, 454 (5th Cir. 1963).

(2) Absent status as the certified or acknowleged representative of the cargo agents, petitioner lacks standing to complain of the alleged subsequent interference with the rights of individual Air France employees. *Adams v. Federal Express Corp.*, 547 F.2d 319, 321-22 (6th Cir. 1976), *cert. denied*, — U.S.—, 97 S. Ct. 2177 (1977).

Conclusion

This case does not involve any conflict of decision among the Circuit Courts of Appeals, nor does it raise a significant unresolved question under the Railway Labor Act. Rather, it is a case with a unique factual setting, the termination of a contract pursuant to its express terms, unchallenged in the only forum which might adjudicate that termination, the Adjustment Board, and thus properly decided by the courts below in accord with established principles. The petition for a writ of certiorari, therefore, should be denied.

Dated: New York, New York
April 5, 1978

Respectfully submitted,

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